

DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN MAUZY PITTMAN, CHIEF JUDGE

CA05-1106

April 12, 2006

JUANITA ARGO

APPELLANT

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT [NO. J-2003-261]

HON. MARK HEWETT,
JUDGE

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

AFFIRMED

The appellant is the biological mother of O.A., a juvenile who was removed from the home and placed in emergency custody of the Arkansas Department of Human Services in March 2003. An attorney was appointed for appellant and, after a hearing, the juvenile was adjudicated dependent-neglected July 9, 2003. The goal of the case plan was reunification, with the parents being directed to obtain and maintain stable housing and sufficient income to support the juvenile, and to submit to drug treatment, assessment, and screening. After the child was injured during visitation with the parents because of the parents' inappropriate behavior, and after the parents were found to be in contempt of court for failure to comply with court orders, a fifteen-month review hearing was held. Finding that appellant had made little effort or progress toward remedying her primary problem of drug addiction, continued to use illegal substances, and failed to maintain stable housing, the trial judge ordered that the goal of the case be changed to termination of parental rights and adoption, with reunification efforts to be made concurrently. After a hearing on March 18, 2005, an order

terminating parental rights was entered on March 28, 2005. Approximately three months later, on June 23, 2005, appellant filed a motion to extend the time for filing a notice of appeal from the termination order. After a hearing on June 30, 2005, the trial court denied appellant's motion to extend the time for filing a notice of appeal. Appellant appeals from the denial of that motion, asserting that the trial court abused its discretion. We affirm.

Pursuant to Ark. R. App. P. – Civ. 4(a), a notice of appeal shall be filed within thirty days from the entry of the judgment, decree or order appealed from.¹ Appellant, having failed to do so, relies upon subsection (b)(3) of that rule, which provides that, upon a showing of failure to receive notice of the judgment, decree, or order from which appeal is sought and a determination that no party would be prejudiced, the circuit court shall, upon motion filed within 180 days of entry of the judgment, decree, or order, extend the time for filing the notice of appeal for a period of 14 days from the day of entry of the extension order.

Although the language of subsection (b)(3) is mandatory, the supreme court has held that the parties still have a duty to make themselves aware of the status of their cases, and that the due diligence requirement still must be read into the Rule. *Arkco Corp. v. Askew*, _____

Ark. ____, ___ S.W.2d ___ (Jan. 6, 2005). Here, appellant testified that she was jailed for part of the time allowed for filing the notice of appeal. However, she offered no testimony to show that she tried in any way to contact either the trial court or her attorney to determine the status of her case, even though she had a visitor at the jail who could have been asked to do

¹Under the Supreme Court's proposed rules for appeal in dependency-neglect cases, the time for filing a notice of appeal will be shortened to fourteen days and no extensions will be allowed. *In re Proposed Rules for App. in Dependency-Neglect Cases*, ___ Ark. ____, ___ S.W.3d ___ (Feb. 2, 2006).

so. Appellant's excuse that she could not remember her attorney's name, even if accepted as true and reasonable, does not explain why she could not have asked her visitor or some other person to obtain the necessary information from the courthouse where she appeared for the termination hearing. On this record, it cannot be said that the appellant demonstrated due diligence or that the trial judge abused his discretion in denying appellant's motion to extend the time for filing a notice of appeal.

Affirmed.

GRIFFEN and ROAF, JJ., agree.